

DRAFT

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF SUNNYVALE AND MUNICIPAL SERVICES ASSOCIATES,
INC. FOR CABLE TELEVISION FRANCHISE RENEWAL NEGOTIATION SUPPORT
SERVICES**

THIS AGREEMENT dated _____ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and MUNICIPAL SERVICES ASSOCIATES, INC. (MSA), an Illinois corporation ("CONSULTANT").

WHEREAS, CITY is in need of specialized services in relation to the negotiation and formal renewal process of the Cable TV Franchise Agreement with Comcast, which expires in December 2005; and

WHEREAS, CONSULTANT possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Services by CONSULTANT

CONSULTANT shall provide services in accordance with Exhibit "A" attached and incorporated by reference. CONSULTANT shall determine the method, details and means of performing the services.

2. Time for Performance

The term of this Agreement shall be from August 2004 through April 2006, unless otherwise terminated. CONSULTANT shall deliver the agreed upon services to CITY as specified in Exhibit "A". Extensions of time may be granted by the City Manager upon a showing of good cause.

3. Duties of CITY

CITY shall supply any documents or information available to City required by CONSULTANT for performance of its duties. Any materials provided shall be returned to CITY upon completion of the work.

4. Compensation

CITY agrees to pay CONSULTANT fees for professional services in an amount not to exceed Fifty Eight Thousand Seven Hundred Fifty and No/100 dollars (\$58,750.00) in accordance with the itemized CONSULTANT Activities listed in Exhibit "B". Notwithstanding the foregoing, the Director of Information Technology may, at the Director's sole discretion, authorize optional or additional services in an amount not-to-exceed Twenty Six Thousand Eight Hundred Forty and No/100 dollars (\$26,840.00). In no event shall the total amount of compensation payable under this agreement exceed the

sum of Eighty Five Thousand Five Hundred Ninety and No/100 dollars (\$85,590.00). CONSULTANT shall submit invoices to CITY to be paid in accord with the procedures set forth in Exhibit "B" attached and incorporated by reference.

5. Ownership of Documents

CITY shall have full and complete access to CONSULTANT's working papers, drawings and other documents during progress of the work. All documents of any description prepared by CONSULTANT shall become the property of the CITY at the completion of the project and upon payment in full to the CONSULTANT. CONSULTANT may retain a copy of all materials produced pursuant to this Agreement.

6. Conflict of Interest

No officer or employee of CITY shall have any interest, direct or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONSULTANT shall not accept employment or an obligation which is inconsistent or incompatible with CONSULTANT's obligations under this Agreement.

7. Confidential Information

CONSULTANT shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONSULTANT may become aware in the performance of its services.

8. Compliance with Laws

- (a) CONSULTANT shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, gender, age (persons 40 years or older), disability, or any other basis to the extent prohibited by federal, state, or local law. All employees of CONSULTANT shall be treated during employment without regard to their race, creed, color or national origin.
- (b) CONSULTANT shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

9. Independent Contractor

CONSULTANT is acting as an independent contractor in furnishing the services or materials and performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONSULTANT. CONSULTANT is responsible for paying all required state and federal taxes.

10. Indemnity

CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services described in Exhibit "A", caused in whole or in part by any negligent act or omission of CONSULTANT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the CITY.

11. Insurance

CONSULTANT shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "C" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "C."

12. CITY Representative

Marilyn Crane, Information Technology Services Manager, as the City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.

13. CONSULTANT Representative

Stuart Chapman, President of MSA, shall represent CONSULTANT in all matters pertaining to the services and materials to be rendered under this Agreement; all requirements of CONSULTANT pertaining to the services or materials to be rendered under this Agreement shall be coordinated through the CONSULTANT representative.

14. Notices

All notices required by this Agreement shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or by sent by commercial courier, addressed as follows:

To CITY: Marilyn Crane, Information Technology Department
CITY OF SUNNYVALE
P. O. Box 3707
Sunnyvale, CA 94088-3707

To CONSULTANT: Stuart Chapman, President
Municipal Services Associates, Inc.
3 Golf Center, Suite 311
Hoffman Estates, IL 60195

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by telephone or facsimile transmission, to accomplish timely communication. However, to constitute effective notice, written confirmation of a telephone conversation or an original of a facsimile transmission must be sent by first class mail or commercial carrier, or hand delivered. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of two days after mailing, unless such date is a date on which there is no mail service. In that event communication is deemed to occur on the next mail service day.

15. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

16. Termination

If CONSULTANT defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONSULTANT. If CITY fails to pay CONSULTANT, CONSULTANT at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days from the date payment is due.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon ten (10) days' written notice to CONSULTANT. In the event of such termination, CONSULTANT shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONSULTANT shall present CITY with any work product completed at that point in time.

17. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

18. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

Deputy City Clerk

Acting City Manager

APPROVED AS TO FORM:

MUNICIPAL SERVICES ASSOCIATES, INC.
("CONSULTANT")

City Attorney

EXHIBIT A

MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE

ORGANIZATION AND PERSONNEL

MSA's principal, Stuart Chapman, will conduct the needs ascertainment process described in this proposal, as well as assist the City of Sunnyvale's counsel with the preparation of the franchise ordinance and franchise agreement drafts. Mr. Chapman will also serve as a technical advisor to the City during the negotiation process.

PROCESS FOR PERFORMING THE COMPLIANCE WITH THE CURRENT FRANCHISE, ASCERTAINMENT OF COMMUNITY NEEDS, PREPARATION OF FRANCHISE DOCUMENTS AND NEGOTIATIONS

ACTIVITY 1.0 CABLE TELEVISION FRANCHISE EVALUATION AND ASSESSMENT

1.1 PERFORMANCE REVIEW

1.1.1 Review of Franchise Documents

- 1.1.1(a). Review of Municipal Franchise Agreements, Ordinances, and amending documents.
- 1.1.1(b). Review previous cable related reports:
 - 1.1.1(b)(1) Prior performance reviews
 - 1.1.1(b)(2) Public hearing minutes and/or transcripts
 - 1.1.1(b)(3) Subscriber and Municipal complaints
 - 1.1.1(b)(4) Notices of Franchise violations.
- 1.1.1(c). Based on the review of the documents, provide recommendations for the new franchise agreement and ordinance.

1.1.2 Review operator's performance under the current franchise agreement and ordinance.

- 1.1.2(a). Identify regulatory and compliance-related criteria in franchise agreement and ordinance and discuss levels of compliance with City staff.
- 1.1.2(b). Where outstanding compliance issues exist, prepare notification to cable operator and review cable operator's response.

1.1.3 Prepare a report of the performance review, and include recommendations based on the findings. Attend City public meeting to present report.

1.2 NEEDS ASCERTAINMENT

1.2.1 Conduct a two day interview of government, educational, and community leaders to discuss future cable needs, including needs involving the use of Access channels:

- 1.2.1(a) One day for representatives of library, elementary and secondary school districts and City of Sunnyvale Government Access staff.

MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE

1.1 PERFORMANCE REVIEW (Continued)

- 1.2.1(b) *One-half day for coordinators and producers of Sunnyvale access programming, including a survey on equipment condition, training, volunteer identification, production, support, and program expansion.*
- 1.2.2 *Conduct one area-wide public meeting to elicit comment on future cable-related needs and interests.*
- 1.2.3 **(OPTIONAL)** *Survey of Subscribers and Non-Subscribers*
 - 1.2.3(a) *Prepare a Subscriber and Non-Subscriber Survey covering, at a minimum, the following topics:*
 - 1.2.3(a)(1) *Subscriber and Non-Subscriber Demographics*
 - 1.2.3(a)(2) *Customer Service Performance*
 - 1.2.3(a)(3) *Repair Service Performance*
 - 1.2.3(a)(4) *Programming Mix and Levels*
 - 1.2.3(a)(5) *Interest in Public, Educational, and Governmental Access Programming*
 - 1.2.3(a)(6) *Cable Rates and Fees*
 - 1.2.3(a)(7) *Future Needs and Interests*
 - 1.2.3(a)(8) *Respondent Comments*
 - 1.2.3(b) *In conjunction with the City, develop a random sample and distribution method.*
 - 1.2.3(c) *Tabulate the survey responses. Prepare Summary and Comprehensive Reports.*
 - 1.2.3(d) *Review the results of the survey with the City. The survey may be incorporated with a Performance Report proposed below.*
- 1.2.4 *Prepare a report of the findings of the interviews and hearings.*

ACTIVITY 2.0 TECHNICAL EVALUATION

Kramer.Firm, Incorporated (K/F) will be working with Municipal Services Associates, Inc. K/F's Proposal and Statement of Qualifications to the City of Sunnyvale concerning a system construction and proof of performance review of Comcast follows. K/F has served as our technology subcontractor on previous assignments in the City.

MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE

Background of K/F:

K/F is headed by Mr. Jonathan Kramer, JD, FSCTE, FIAE, who formed K/F's predecessor in 1984. Since 1984, municipal governments have been provided with comprehensive and clear technical and operating evaluations of cable television systems. K/F provides its clients with professional and thorough franchise supervision, enforcement, and negotiation services related to municipal communications issues.

K/F is incorporated in California, where it maintains its head office in Los Angeles. Work for the City of Sunnyvale will be coordinated through MSA's Hoffman Estates office.

K/F has successfully completed over three hundred government consulting assignments similar or essentially identical to the services proposed by the City, including inspections of AT&T in Sunnyvale, and Comcast in other communities in the Bay Area (City and County of San Francisco; SAMCAT; Milpitas; Benicia; Richmond), and the Central Valley (Modesto; Sacramento).

Plan to Accomplish the Engagement

K/F proposes to provide the following services to the City:

Physical Plant Inspection Services

Comprehensive Physical Plant Inspections--Subscriber Network

To assess the physical condition of Comcast's cable system within the City, we shall conduct a 250-point inspection, representing all major portions of the City, including single-family, multiple-family, and commercial areas.

The 250-point inspection may, at our option, be substituted with a drive-out of at least 30% of the total plant trunk mileage within the City if we believe that a plant drive-out will yield information that is more useful for the City.

The physical evaluation will allow us to assess and quantify the following items:

- Comprehensive analysis of overhead and underground construction techniques in the outside cable plant, and their impact on reliable system operation consistent with the requirements of the National Electrical Code (City-adopted or current State-adopted version), covering communications systems construction in public and private rights-of-way.

- Power supply construction.

- Comprehensive estimates of additional work (if any) that Comcast must do to comply with the applicable safety codes, cited above, to correct any physical defects or unresolved construction violation noted during the inspection.

- Other items deemed pertinent to reliable system operation.

Photographic documentation may be included as an attachment to our written report to illustrate specific findings and/or violations.

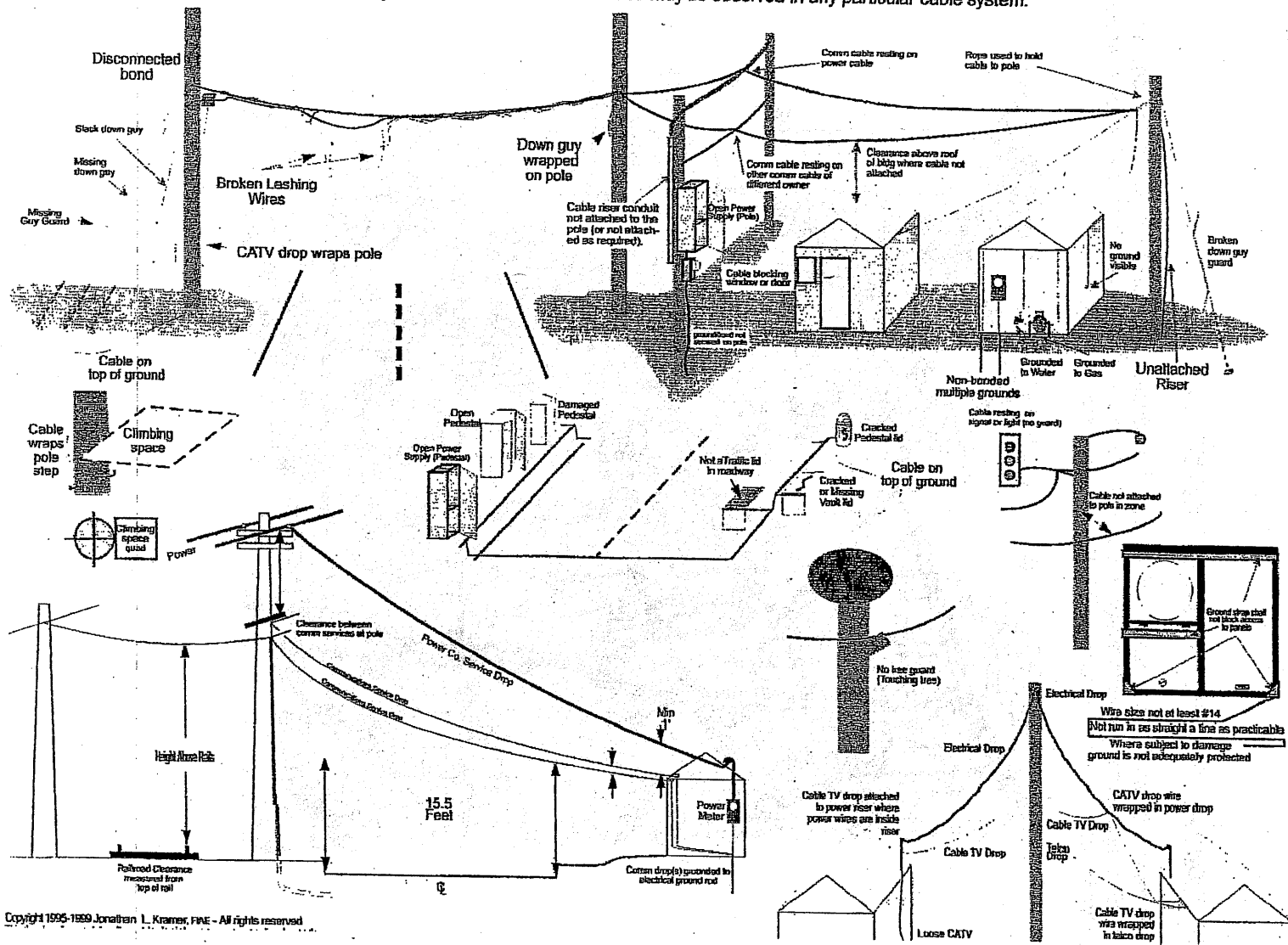
MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE

A graphic illustrating some of the most common construction violations is presented on the next page. It is one of the teaching tools we have developed and consistently use to illustrate these issues for the City Council, counsel, and staff.

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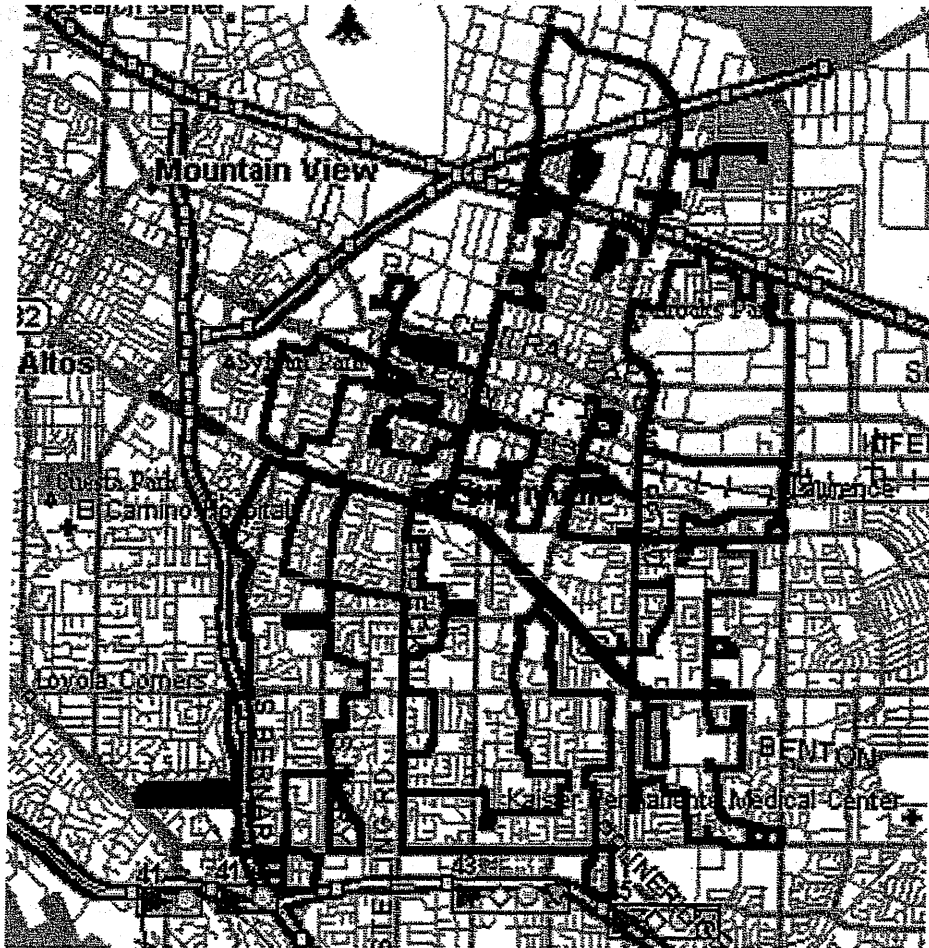
Common Outside Plant Violations Based on the National Electrical Safety Code and the National Electrical Code

Note: For illustration only. Not all violations illustrated here may be observed in any particular cable system.



MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE

The following illustration is a sample of a map we produced using GPS satellite technology showing our inspection route during a previous physical plant evaluation in Sunnyvale. We shall produce a similar map of the City to show where we inspect within Sunnyvale during this project.



MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE

Grounding Inspection – Subscriber Network

To provide the City with a comprehensive assessment of Comcast's level of compliance with its obligation to ground its subscriber drops, we'll inspect at least 100 subscriber drop locations widely throughout the City. Those 100 subscriber and non-subscriber drop locations will differ from the physical plant inspection points discussed above.

We will determine if Comcast has complied with the requirements of the Electrical Code based on the NEC 820-40 and CPUC GO95 and GO128 standards.

Deliverable

Our findings regarding Comcast's achievements and deficiencies (if any) shall be documented in a letter report to the City.

The findings in that letter report may be supported by representative photographs of any points we believe are required to illustrate issues raised therein. This report will be issued approximately three weeks after we complete all of our inspections in the City. Two sample photographs are shown on the following page.

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MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE

Proof of Performance Inspection Services

To provide an assessment of the technical (picture quality) condition of Comcast's system within the City franchise area, we shall evaluate and report on the most current two FCC-required "proof of performance" (POP) reports and monitor Comcast as it conducts a City-wide 12 point technical inspection under our supervision.

The FCC-required POP tests document the transmission characteristics and, thus, Comcast's compliance with the FCC rules at 47 CFR 76, Subpart K.

The following are key tests documented in the POP with a discussion of the importance of each test. All test parameters will be evaluated.

Visual (Picture Signal) Carrier Levels on Each Activated Channel

This measurement assesses compliance with FCC Part 76 Subpart K rules governing the minimum signal level permitted on a subscriber's television set.

Aural (Sound Signal) Carrier Levels on Each Activated Channel

This measurement assesses compliance with FCC Part 76 Subpart K rules governing the minimum signal level permitted at a subscriber's television set antenna terminals. Audio levels that fall outside this permitted range can cause audio distortions or interference to the upper adjacent picture quality.

Peak-to-Valley on the Entire Band of Activated Channels

This is a summation assessment which provides data about both the physical and electrical conditions of Comcast Cable's plant. Major physical and/or electrical defects are quickly and clearly identified by this test. Performing this test also permits us to detect system adjustment problems, based on the performance of the system in the next section.

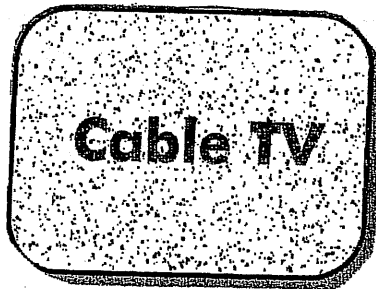
Adjacent Channel Video Difference on Activated Channels

Another summation assessment, the adjacent channel video difference is computed to assess adherence to the FCC's rules designed to maintain video signals on all adjacent channels within a certain range. Some older television tuners can fail to "lock" onto a channel properly if this specification is greatly exceeded.

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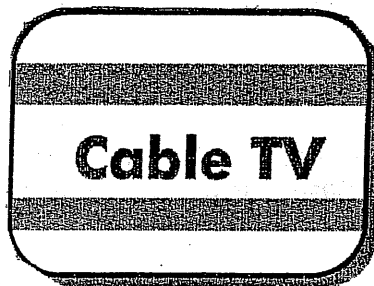
MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE

Carrier-to-Noise Ratio



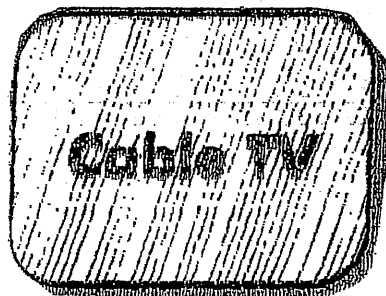
Universally regarded by industry engineers as the most critical picture-impacting specification, the Carrier-to-Noise ratio quantifies the amount of "snow" seen in a television picture.

Low Frequency Distortions ("Hum")



Hum is seen in pictures as one or two wide horizontal bars traveling upward through the picture. It is usually caused by defective or inadequate system electrical powering, filtering, corroded connectors, and/or grounding.

Intermodulation Distortions



These distortions are commonly seen as a "busy" picture background, usually as herringbone or diagonal line distortions. They are caused by the television channels intermixing within the field amplifiers. Sometimes, these signal distortions are caused when a cable operator provides its set-top converters with too much signal.

MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE

Engagement Timetable

We will begin work on this project within 90 days from the acceptance date of this proposal. Exact scheduling is initially coordinated by those options selected by the City, and then subject to coordination between the City, MSA, K/F, and Comcast.

For information only, we anticipate spending approximately one work week on-site, and 30 hours for project preparation, reporting, and meetings.

Additional Information

K/F maintains \$1,000,000 of general liability insurance and business automobile insurance with The Hartford, and/or State Farm, and/or other similarly rated insurance carriers. The Hartford is our Workers Compensation insurance carrier.

Pursuant to the Cable Communications Policy Act of 1984, as modified by the Telecommunications Act of 1996, and the Cable Television Consumer Protection and Competition Act of 1992 at §635 (a)[{47 USC 555(A)(a)}], we are designated by the City as a member of the City's cable television franchise team.

We Are Jointly Responsible for the Success of this Engagement

We have repeatedly found that the most successful and beneficial consulting engagements are the product of close and cooperative working relationships between the client and consultant. We jointly and severally have responsible roles in determining whether this engagement will be useful to you.

For us to provide you with the very useful work product and enable us to successfully complete our assignment in a timely manner, we have identified key areas that will require the active cooperation of the City.

Consistent with these goals, while working on-site, we will want to have reasonable access to

All correspondence with and related to Comcast, any former operators within the areas governed by the City, and all other materials related to CATV under the control of the City and/or its employees and agents necessary for us to complete our assignment.

Additionally, we require that you provide us with letters of authority for us to carry while in the field, along with letters informing state, county, and local law enforcement and road department officials of our assignments and authority. (Upon request, we will provide you with samples of these letters)

MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE

ACTIVITY 3.0 FRANCHISE FEE EVALUATION

Mr. Lou Karrison, CPA, Partner of Sikich Gardner, & Co, LLP will be working with Municipal Services Associates, Inc. on an analysis of franchise fees received by the City of Sunnyvale for the 2003 Fiscal Year.

By periodically testing the cable operator's compliance with the terms of the franchise agreement, the following benefits of the Franchise Fee Evaluation can be realized:

- A. Any shortfall in reported revenues can be detected, resulting in additional franchise fees.
- B. The cable operator will be less likely to under report in the first place if it knows it will be subjected to review.
- C. Noncompliance findings may be useful in renewal, modification, or litigation proceedings.

Statement of No Conflict of Interest:

Sikich, Gardner & Co., LLP does not provide audit or any other services for Comcast Cable and its affiliates, or any cable company. As such, we are completely without any conflict or appearance of conflict of interest. We have performed franchise fee revenue compliance "agreed-upon procedures" engagements of cable companies for over 100 local governments.

Sikich Gardner & Co., LLP has developed what is believed to be a unique expertise in performing these typed of engagements. Since the auditing team has tested many cable companies, they are extremely familiar with their accounting systems and methods. As Sikich Gardner & Co., LLP is a firm of certified public accountants, their main business is auditing. The individuals to be assigned to this project are specifically trained and skilled in auditing. We audit over one hundred units of government, as well as numerous corporations, partnerships, and nonprofit entities. This experience has proven to be invaluable.

The project staff will perform agreed-upon procedures on revenue/receipt transactions to verify compliance in accordance with franchise fee terms of the franchise agreement by Comcast Cable. A complete report of the findings will be submitted at the completion of the engagement.

Procedures will be performed using a "business approach" that focuses on an understanding of the cable operator rather than just performing detail testing of the accounting records. Our fees for the evaluation, shown later in this proposal, contemplate (a) auditable and available records and (b) reasonable cooperation on the part of the cable operator. If the cable operator does not cooperate, we would cease work immediately and report back to MSA and the City for further direction.

MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE

SERVICES TO BE PROVIDED:

The term "agreed-upon procedures" means that we will not be performing an audit in accordance with generally accepted auditing standards. We will be performing specific, audit-type procedures on specific accounts or account balances, all of which will be mutually agreed-upon by the franchise authority and Sikich Gardner & Co., LLP. This methodology is the most cost-efficient approach for a franchise authority.

Procedures (Example)

Compare cash receipts reflected on bank account statements with (a) cash receipts recorded on cash deposit records, (b) cash receipts posted to the general ledgers, and (c) cash receipts posted to the billings/receipts (franchise accounting) reports.

Compare all subscriber fees, including installation/reconnection charges, pay-per-view, remote controls, guides, etc., from billings/receipts reports to franchise fee worksheets.

Compare all franchise fee worksheets with franchise fee payment schedules submitted to the franchise authority

Test the recording, allocating, and reporting of advertising revenues (and any deductions such as agency fees, representation fees, and collection expenses) between the franchise authority and other franchise authorities.

Test the recording, allocating, and reporting of home shopping revenues between the franchise authority and other franchise authorities.

Test the reporting of bad debts, refunds, and NSF checks on the franchise fee worksheets.

Review "Miscellaneous cash receipt ledgers" for potential revenues and general ledger expense accounts for credits which may be revenue items.

Obtain financial information, including general ledgers, tax returns, and financial statements of the franchise company, and perform a reconciliation, to the extent practicable, of revenues reported in the financial information with revenues reflected in the detail records of the franchise company.

It should be emphasized that, given the limited amount of hours available for transaction testing, only a representative sample can be drawn. The primary focus of the procedures is on the accounting and reporting system, with the expectation that any compliance findings will "show up" in the limited transactions tested. Should compliance findings exist, the transaction testing could always be expanded to identify and quantify the extent of noncompliance.

MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE

Methodology

Preliminary

Meeting - Scope Definition

Review Agreement/Ordinance

Planning/Start-Up

Assemble File and Notify Cable Operator (by letter)

Review Logistics (location for field work) and Set Appointment

Systems Understanding

Review and Document

Internal Controls

Review, Document, and Evaluate

Testing

Billing Cycle

Cash Receipts Cycle

Financial Reporting Cycle

Evaluate Results

Report

Prepare and Issue "Draft"

Prepare and Issue "Final"

Fieldwork should be performed at the cable operator's office. We would have access to the operator's actual records and middle-level staff, which would maximize the credibility of the documentation and responses to our inquiries.

NOTE: Fieldwork timing is dependent on the cable operator's ability to provide documentation in an auditable fashion.

The approach to the assignment of personnel is that of a team concept with a partner and senior manager or manager assigned to each team. As such, the individuals whose professional resumes follow at the end of this proposal have the experience, training, education, and background to render efficient, quality service.

MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE (REVISED JANUARY 17, 2004)

ACTIVITY 4.0 CABLE ORDINANCE

- 4.1 Review and Redrafting. In cooperation with the Corporation Counsel, review and rewrite the municipal cable ordinance to address current and anticipated technical, facility, organizational, procedural, operational, franchise, PEG, and service issues.
- 4.2 Modifications and Finalization. Based upon input from City staff and officials, and, at the option of the City, the Cable Operator, write modifications and finalize ordinance.

ACTIVITY 5.0 FRANCHISE AGREEMENT

- 5.1 Preparation of Initial Agreement Draft. Based on the outcome of the needs ascertainment process, in conjunction with Corporation Counsel, assist in the drafting of the initial franchise agreement.
- 5.2 Modifications and Finalization. Based upon the outcome of negotiations, prepare modified franchise agreement language and finalize agreement draft.
- 5.3 Presentation. Attend Common Council meeting to present final Franchise Agreement document and answer questions.

ACTIVITY 6.0 NEGOTIATIONS

- 6.1 Serve as a technical advisor to the City during the negotiation of the franchise agreement with the operator. The negotiating hours are capped at 60 hours -- 10 hours for discussions with the operator on the draft ordinance, and 50 hours to negotiate the franchise agreement. The time spent on negotiations is dependent on the cooperation of the cable operator. Any additional hours required to be authorized by the City. Legal counsel is provided by the City unless MSA is directed to secure counsel for the City.

PROPOSED TIMELINES

MSA proposes the following timelines for the Franchise Renewal Project:

CABLE TELEVISION FRANCHISE RENEWAL (REVISED JANUARY 17, 2004):

2004

March -April	Review franchise documents Review operator performance under current agreement Conduct Physical Plant and Technical Quality Inspections Prepare Subscriber Survey Instrument (Optional)
May-June	Report on Proof-of-Performance/Signal Testing
June-July	Begin Franchise Fee Evaluation Conduct Subscriber Survey (Optional)

MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE (REVISED JANUARY 17, 2004)

PROPOSED TIMELINES

MSA proposes the following timelines for the Franchise Renewal Project:

CABLE TELEVISION FRANCHISE RENEWAL (REVISED JANUARY 17, 2004):

2004

August-September	Tabulate Subscriber Survey (Optional) Prepare Subscriber Survey Report (Optional) Conduct Public Meetings for Needs Ascertainment Conduct needs ascertainment interviews
November	Complete Ascertainment Report Complete Franchise Fee Report

2005

January	Begin drafting initial cable ordinance
February-March	Present draft of Cable Ordinance and municipal review of Ordinance
March-April	Prepare modifications to Ordinance
April	Ordinance to Cable Operator for comments.
May-June	Ordinance discussions with Cable Operator
July	Prepare initial Franchise Agreement Begin negotiations

2006

February-March	Complete negotiations
March-April	Approve Final Franchise Agreement

EXHIBIT B

FEE FOR PROFESSIONAL SERVICES:

Activity 1.0	Evaluation and Needs Ascertainment	\$ 11,550
Activity 2.0	Technical Evaluation	\$ 16,240
Activity 3.0	Franchise Fee Evaluation	\$ 14,960
Activity 4.0, 5.0	Ordinance/Franchise	\$ 6,400
Activity 6.0	Negotiations:	\$ 9,600

FEE FOR PROFESSIONAL SERVICES **\$ 58,750**
(Includes fees for negotiations at a cost not to exceed \$9,600)

OPTIONS **SUBSCRIBER/NON-SUBSCRIBER SURVEY** **\$ 7,500**

FRANCHISE FEE EVALUATION: INCLUDE
EXAMINATIONS OF FISCAL YEARS 2001 AND 2002 **\$ 7,840**

WHOLE OR PART: To permit the City the greatest flexibility, it may accept all or portions of the professional services offered in this proposal.

HOURLY FEES: For work not expressly described in this proposal, including, but not limited to, on-site meetings, teleconferences, unspecified document reviews, etc., the following fee schedule will be charged at the usual and customary levels listed below:

Hourly Fees for Additional Requested Services:

Municipal Services Associates	\$160
Kramer.Firm, Inc.	\$190 -K/F Principal
	\$170-K/F Technical Inspectors
Sikich Gardner & Co., LLP	\$175

MSA PROPOSAL TO SERVE THE CITY OF SUNNYVALE

PAYMENT SCHEDULE:

Initiation of Franchise Evaluation/Assessment	\$ 5,675
Completion of Public Meeting	\$ 1,825
Completion of Survey Instrument	\$ 2,500 (Optional)
Completion of Survey Tabulation	\$ 4,000 (Optional)
Completion of Survey Report	\$ 1,500 (Optional)
Completion of Needs Ascertainment Report	\$ 3,000
Beginning of 2003 Franchise Fee Evaluation (Data Request)	\$ 7,400
Completion of 2003 Franchise Fee Evaluation Final Report	\$ 7,560
Completion of Franchise Fee Evaluation for 2001, 2002	\$ 7,840 (Optional)
Beginning of Physical Plant Evaluation	\$ 6,000
Completion of Physical Plant Evaluation Report	\$ 5,370
Beginning of Proof-of-Performance Evaluation (Tech Survey)	\$ 2,200
Completion of Proof-of-Performance Evaluation Report	\$ 2,670
Completion of Cable Ordinance Draft	\$ 1,400
Completion of Final Ordinance	\$ 1,400
Completion of Draft Franchise Agreement	\$ 1,500
Negotiations	As completed to capped figure
Final Franchise Agreement	\$ 3,150

LEGAL CONSULTATION: Legal consultation shall be conducted through the City's counsel. No other legal assistance is provided in this contract.

INSURANCE: Municipal Services Associates, Inc. carries General Liability, Automotive Liability, and Professional Liability insurance, including Errors and Omissions coverages. Copies of Certificates of Insurance currently in force may be presented to the client upon request.

INVOICES: Expenses incurred during a billing period are added to the amounts shown above, subject to the expenses cap described below. Invoices are due and payable within twenty-five (25) days of receipt. A Purchase Order or written notice to proceed per the terms of this offer shall be acceptable consideration for the initiation of the contract with payment to follow within ten days of the purchase order binder or notice to proceed.

NO CONFLICT OF INTERESTS: No employee or subcontractor of Municipal Services Associates, Inc. has ever been employed by Comcast, its predecessors, AT&T Broadband and TCI, any parent corporation, or any known subsidiary. We do not know of any direct, indirect, perceived, or potential conflicts of interest not mentioned above which might taint or otherwise discredit any work, service, or advice provided to the City.

REASONABLE TRAVEL AND OUT OF POCKET EXPENSES: The client is responsible for reasonable travel and out of pocket expenses. MSA's mileage charges are \$0.36 per mile. MSA and Kramer.Firm, Inc. staff travel by the lowest available fare at the time of booking. Unless the client requires immediate attention. MSA and Kramer.Firm, Inc. will cap their non-travel related expenses at \$1,800 each. Sikich Gardner will bill for actual out-of-pocket costs incurred, and shall use medium-priced hotels and auto rentals. Airfares, if necessary, will be booked as inexpensively as practicable, and per diems are \$50.00 per day per person. Sikich Gardner cannot estimate expenses until the project staff knows the estimated hours required and geographical locations of the records. Out of Pocket expenses may cover, but not be limited to, lodging, federal express charges, public transportation, car rental, parking fees, tolls, and meals.

EXHIBIT C INSURANCE REQUIREMENTS

CONSULTANT shall obtain, at its own expense and from an admitted insurer authorized to operate in California, the insurance coverage detailed below and shall submit Certificate(s) of Insurance to the City of Sunnyvale, Purchasing Division, 650 West Olive Ave, PO Box 3707, Sunnyvale, CA 94088-3707; fax (408) 730-7710.

CONSULTANT shall take out and maintain during the life of the contract **Workers' Compensation and Employer's Liability Insurance** for its employees. The amount of insurance shall not be less than \$1,000,000 per accident for bodily injury or disease.

CONSULTANT shall take out and maintain during the life of the contract such **Commercial General Liability Insurance** as shall protect CONSULTANT, CITY, its officials, officers, directors, employees and agents from claims which may arise from services performed under the contract, whether such services are performed by CONSULTANT, by CITY, its officials, officers, directors, employees or agents or by anyone directly or indirectly employed by either. The amount of insurance shall not be less than the following: Single Limit Coverage Applying to Bodily and Personal Injury Liability and Property Damage: \$1,000,000.

The liability insurance shall include, but shall not be limited to:

- Protection against claims arising from bodily and personal injury and damage to property, resulting from CONSULTANT's or CITY's operations and use of owned or non-owned vehicles.
- Coverage on an "occurrence" basis.
- Broad form property damage liability. Deductible shall not exceed \$5000 without prior written approval of CITY.
- Notice of cancellation to CITY's Purchasing Division at least thirty (30) days prior to the cancellation effective date.

The following endorsements shall be attached to the liability insurance policy, and copies shall be submitted with the Certificate(s) of Insurance:

- The policy must cover complete contractual liability. Exclusions of contractual liability as to bodily injuries, personal injuries and property damage must be eliminated.
- CITY must be named as additional named insured with respect to the services being performed under the contract.
- The coverage shall be primary insurance so that no other insurance effected by CITY will be called upon to contribute to a loss under this coverage.

